

Private foundation taxable expenditures; long-term, low-interest educational loans. Long-term, low-interest educational loans made by a private foundation under a program that specifically limits the use of the funds to furtherance of the recipient's education at an educational institution described in section 170(b)(1)(A)(ii) of the Code are individual grants within the meaning of section 4945(g)(3).

'Advice has been requested whether long-term, low-interest educational loans made under the program described below are individual grants within the meaning of section 4945(g)(3) of the Internal Revenue Code of 1954.

'A private foundation, exempt from Federal income tax under section 501(c)(3) of the Code and described in section 509(a), operates a program under which it awards long-term, low-interest educational loans. Recipients are selected primarily on the basis of need, but academic ability and potential are also considered. The specific provisions of the loans require that they be used at educational institutions described in section 170(b)(1)(A)(ii).

'Section 4945(a)(1) of the Code imposes an excise tax on 'taxable expenditures' made by a private foundation. Section 4945(d)(3) defines the term 'taxable expenditure' to include amounts paid or incurred as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of section 4945(g).

'Section 4945(g) provides that section 4945(d)(3) shall not apply to individual grants awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary or the Secretary's delegate, if it is demonstrated to the satisfaction of the Secretary or the Secretary's delegate that:

- (1) the grant constitutes a scholarship or fellowship which is subject to the provisions of section 117(a) and is to be used for study at an educational institution described in section 170(b)(1)(A)(ii),
- (2) the grant constitutes a prize or award which is subject to the provisions of section 74(b), if the recipient of such prize or award is selected from the general public, or
- (3) the purpose of the grant is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

'Section 53.4945-4(a)(2) of the regulations provides that, for purposes of section 4945, the term 'grants' includes, but is not limited to, such expenditures as scholarships, fellowships, internships, prizes, and awards, as well as loans for purposes described in section 170(c)(2)(B). The purposes described in section 170(c)(2)(B) include those that are educational.

'An educational loan, at the time it is made, is not a 'scholarship' or 'fellowship' grant within the meaning of section 117 of the Code, nor is it a 'prize' or 'award' within the meaning of section 74. Consequently, because general educational loans do not readily fit the grant categories described in section 4945(g)(1) or (2), they must be to achieve a specific objective or otherwise qualify within the meaning of section 4945(g)(3) in order to avoid being taxable expenditures.

'Neither the Code nor the regulations provide a definition of the terms used in section 4945(g)(3). However, it is clear from the legislative history that Congress was concerned that prior tax law did not effectively limit the extent to which a foundation could use its funds for educational grants to enable people to take vacations abroad, to have paid interludes between jobs, and to subsidize the preparation of materials furthering specific political viewpoints. See H.R. Rep. No. 91-413, 91st Cong., 1st Sess. 33 (1969), 1969-3 C.B. 200, 221; S. Rep. No. 91-552, 91st Cong., 1st Sess. 47 (1969), 1969-3 C.B. 423, 455. Congress was concerned that grants made under a broad statement of purpose afforded grant recipients too much freedom in deciding how the funds would be spent.

'Sections 4945(d)(3) and 4945(g) of the Code were enacted to curb these abuses while permitting programs that encourage charitable purposes to continue. The term 'specific objective' and the other purposes described in section 4945(g)(3) were employed to describe those individual grants that are made for purposes sufficiently narrow and definite to ensure that recipients are authorized to expend the funds only in furtherance of charitable purposes described in section 501(c)(3).

'The educational loans made by the private foundation under the program described above afford the recipients an opportunity to continue their education at an institution of higher learning.

While the recipients of its grants are free to choose the schools and classes they attend, the foundation specifically limits the use of the funds to furtherance of the recipient's education at an educational institution described in section 170(b)(1)(A)(ii) of the Code. Such an objective is sufficiently narrow and definite to ensure that the recipients are authorized to expend the funds solely in furtherance of a purpose described in section 501(c)(3). Accordingly, the loans made under the private foundation's program are individual grants within the meaning of section 4945(g)(3).